# NEW YORK COURT OF EQUITY AWARDS EXEMPLARY DAMAGES

*I. H. P. Corp. v. 210 Central Park South Corp.*
*12 N.Y.2d 329, 189 N.E.2d 812, 239 N.Y.S.2d 547 (1963)*

It is a well established principle of the law that a litigant seeking damages must bring his action in a court of law. A court of equity, however, once it has taken jurisdiction of a matter, will retain that jurisdiction for all purposes and will exercise its power to award compensatory damages incidental to equitable relief when without such an award the relief will not be a complete and final disposition of the litigation.[1]

In addition to allowing the injured party to recover actual or compensatory damages, which are designed solely to compensate for the loss sustained and no more, a large majority of jurisdictions permit the trier of fact in legal actions to impose exemplary or punitive damages. These are punitive in nature and are awarded where the tortfeasor has committed acts of a wanton, reckless, malicious, or oppressive character.[2] The relative wisdom of the policy of permitting damages to be assessed by way of punishment in a civil action is not within the scope of this note. It is enough to point out that exemplary or punitive damages have been viewed by the vast majority of jurisdictions as assessable in actions in law, while only a very few jurisdictions have heretofore permitted such an award in equity.

However, the present trend of the law seems to be moving toward support of a position somewhat in advance of what in the past has constituted the outer limitation of the powers of a court of equity. The 1963 opinion handed down in the instant case places New York alongside the appellate courts of California,[3] Tennessee,[4] and most recently, the Supreme Court of Texas,[5] in affirmatively declaring that a court of equity may in its discretion award exemplary or punitive damages as well as compensatory damages incidental to injunctive relief.

The State of New York, wherein the instant case was decided, had for many years been one of the strongest proponents of the proposition that exemplary or punitive damages cannot be awarded by a court of equity. An early case in which this position was taken is *Witkop & Holmes Co. v. Great A. & P. Tea Co.*,[6] where plaintiff sought to restrain unfair

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1 19 Am. Jur. *Equity* § 125 (1939).

2 15 Am. Jur. *Damages* § 265 (1938).

3 Sandler v. Gordon, 94 Cal. App. 2d 254, 210 P.2d 214 (1949); Rivero v. Thomas, 86 Cal. App. 2d 225, 194 P.2d 533 (1948); Union Oil Co. v. Reconstruction Oil Co., 20 Cal. App. 2d 170, 66 P.2d 1215 (1937).

4 Lichter v. Fulcher, 22 Tenn. App. 670, 125 S.W.2d 501 (1938); Nashville Union Stockyards, Inc. v. Grissim, 13 Tenn. App. 115 (1930).

5 International Bankers Life Ins. Co. v. Holloway, 368 S.W.2d 567 (Tex. 1963).

6 69 Misc. 90, 124 N.Y.S. 956 (Sup. Ct. 1910).

competition on the part of the defendant. Without citing any authority, the court held that they were without the power to impose a fine under the name of exemplary damages in such a case, and were limited to the granting of injunctive relief only.

In 1936, some twenty-six years after the decision in the *Witkop* case, a New York appellate court reinforced the New York position in the case of *Winthrop Chemical Co. v. Blackmon.*[7] The *Winthrop* case concerned a trademark infringement, wherein plaintiff sought to modify the referee's report on an accounting for profits in order to allow for counsel fees. In New York, the recovery of counsel fees and other expenses of bringing suit in tort actions is confined to those actions where exemplary damages are recoverable.[8] In refusing to award counsel fees, the court in *Winthrop* stated that no action, regardless how fraudulent, could give a court of equity the right to grant exemplary damages.

In 1947, the New York Court of Appeals decided the case most often relied upon by litigants as delineating the former New York position that the power of equity is limited to the granting of compensatory damages incidental to injunctive relief. The case is that of *Dunkel v. McDonald,*[9] relied on by the defendants in the instant case in support of their argument on appeal. Suit was initiated in the *Dunkel* case to enjoin a theatrical contractors' association from enforcing illegal resolutions and bylaws and for damages. In holding that a referee's award granting punitive damages to the plaintiff could not be sustained, the appellate division stated that "the function of a court of equity goes no further than to award, as incidental to other relief or in lieu thereof, compensatory damages; it may not assess exemplary damages." [10] The denial of punitive damages was affirmed by the court of appeals.[11]

In 1961, the instant action was instituted in the Supreme Court of New York County. Plaintiff, in alleging the lack of an adequate remedy at law and asking for injunctive relief together with compensatory and punitive damages, presented an interesting and generally uncontroverted description of the facts surrounding the initiation of his action. Plaintiff was the lessee of part of a building owned by one of the defendants and managed by another of the defendants. Plaintiff operated a restaurant in the premises under a long term lease. Plaintiff informed the defendants that, subject to a stock transfer by its sole shareholder, a new type of restaurant was to begin operation in the same premises and that there was no intent on its part to surrender its lease.

Five months later, defendant 210 Central Park South Corporation sent plaintiff notice of its intent to terminate the lease in three days and

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[7] 159 Misc. 451, 288 N.Y.S. 389 (Sup. Ct. 1936).

[8] *E.g.*, Miss Susan, Inc. v. Enterprise & Century Undergarment Co., 297 N.Y. 512, 74 N.E.2d 461, 62 N.Y.S.2d 250 (1947). See also 13 N.Y. Jur. *Damages* 143 (1960).

[9] 298 N.Y. 586, 81 N.E.2d 323 (1947).

[10] 272 App. Div. 267, 272, 70 N.Y.S.2d 653, 658 (1947).

[11] *Supra* note 9. The *Dunkel* decision was followed in Hornblower & Weeks v. Sherwood, 307 N.Y. 806, 121 N.E.2d 628, 124 N.Y.S.2d 322 (1959).

called upon plaintiff to quit and surrender. Notice was rejected. Shortly thereafter the defendant landlord broke into plaintiff's restaurant, removed electric fuses, nailed and boarded up all the windows, and boarded up all the exits and entrances to plaintiff's leasehold. The following morning plaintiff re-entered, replaced the fuses and unboarded the means of access. Four days thereafter the defendants struck again. This time, with the help of a hired ironworker, they barred the windows and doors with welded metal bars and plates. Acetylene torches and professional ironworkers were called upon to help plaintiff re-enter the premises. The court determined that the motive for the persistent attempts by the defendants to force plaintiff to give up his leasehold was that the defendants hoped to profit from a sale of the building and its subsequent destruction in conjunction with a property development plan for the area.

At the close of plaintiff's case, the court allowed plaintiff to amend its pleadings to conform to proof that the defendants' acts were wanton and willful and to amend the prayer to include exemplary as well as actual damages. The court thereafter awarded plaintiff the injunctive relief and compensatory damages sought as well as punitive damages equaling three times the total compensatory damages.[12]

On appeal to the New York Supreme Court, Appellate Division, the defendants, relying on *Dunkel,* argued that a court of equity has no power to grant exemplary damages. The court reasoned that a contention such as that supported in the *Dunkel* case presupposed that courts sit exclusively either as law courts or equity courts and cannot act in both roles at the same time. The court declared that such a contention was by statute no longer supportable.[13]

The appellate court in the instant case stated that by statute New York has removed outmoded procedural barriers against awarding complete relief in a single action. No one, the court declared, should have to choose between two inadequate remedies. Thus the fact that there is by statute only one cause of action in New York, together with the principal that equity once it has gained jurisdiction of the subject matter will retain that jurisdiction for all purposes in order to give complete relief, prompted the appellate court to declare that the *Dunkel* case and the line of cases supporting it should be overruled.

In affirming the action of the two lower courts, the New York Court of Appeals expressly overruled *Dunkel.*[14] The court stated that the sole present distinction between law and equity is that trial by jury is constitutionally guaranteed in courts of law and not in equity. The court held that the only present requirement necessary to support an award of exemplary damages at law or in equity is that along with the existence of compensatory damages, malice must be demonstrated to have existed on

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[12] I. H. P. Corp. v. 210 Central Park South Corp., 27 Misc. 2d 964, 212 N.Y.S.2d 136 (Sup. Ct. 1961).

[13] 16 App. Div. 2d 461, 228 N.Y.S.2d 883 (1963).

[14] I. H. P. Corp. v. 210 Central Park South Corp., 12 N.Y.2d 329, 189 N.E.2d 812, 239 N.Y.S.2d 547 (1963).

the part of the defendant, and that such a finding by the supreme court was clearly justified in the instant case.[15]

Having by its decision in the instant case overruled the earlier New York position on the power of equity to award exemplary damages, the New York court has now given great impetus to the position taken long before the instant case by appellate courts in California. In California, a number of decisions dating from the 1937 case of *Union Oil Co. v. Reconstruction Oil Co.*[16] gave early indication of what might possibly now become the trend of the law on the question of equitable powers with respect to punitive damages.

The *Union Oil* case reached the appellate court upon the contention of the defendants that the lower court committed reversible error in permitting enlarged compensatory damages which in fact amounted to punitive damages and thus went beyond the power of a court of equity. The appellate court found that the damages awarded did in fact amount to punitive damages. However, the court held that California was a code state and recognized only one form of action; thus, any damages recoverable at law would be recoverable in an equitable action.

There followed in 1948 the case of *Rivero v. Thomas*,[17] wherein an incompetent sought to establish a constructive trust for money had and received and was granted punitive damages on the basis of the malice demonstrated by defendant in handling her affairs. On appeal, the court cited the *Union Oil* case and stated that the power of equity to award punitive or exemplary damages is discretionary with the court and can be exercised whenever the court finds the requisite fraud or malice. The court declared that such an award is not reversible error unless the amount awarded is unjust or unreasonable. One year later in *Sandler v. Gordon*,[18] the court supported its earlier position declaring that equity can, by way of punishing a deserving defendant, award damages in addition to actual damages and incidental to injunctive relief.[19]

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[15] The *I. H. P.* case was followed in two subsequent New York appellate decisions: Fontana v. Town of Hempstead, 18 App. Div. 2d 1084, 239 N.Y.S.2d 512, (1963) and Fittipaldi v. Legassie, 18 App. Div. 2d 331, 239 N.Y.S.2d 792 (1963). The *Fontana* case involved an action to compel the town of Hempstead and a construction corporation to continue certain drainage procedures to prevent flooding and to recover compensatory and punitive damages. The court, citing the instant case, permitted the recovery of punitive damages in addition to the injunctive relief prayed for by the plaintiff. The court stated that where punitive damages are reasonable and the circumstances warrant, such damages will be awarded.

In the *Fittapaldi* case, union members sued for wrongful suspension and expulsion through unfair trials and sham procedures. They prayed for reinstatement plus punitive damages. The supreme court found sufficient willfulness on the part of the defendants to support an award of exemplary damages.

[16] *Supra* note 3.

[17] *Supra* note 3.

[18] *Supra* note 3.

[19] See also Coleman v. Ladd Ford Co., 215 Cal. App. 2d 90, 29 Cal. Rptr. 832 (1963).

Texas was generally considered, until recently, a state supporting the position that exemplary damages are not recoverable in equity. However, with the decision handed down by the Texas Supreme Court in *International Bankers Life Ins. Co. v. Holloway*,[20] Texas has joined New York, Tennessee, and California. In its opinion in *International Bankers* the Texas court declared that the fact that plaintiff corporation sought an equitable remedy does not preclude their recovery of exemplary damages if the facts warrant such an award.

Tennessee appellate decisions have in principle long been in accord with California, New York, and Texas in recognizing the power of a court of equity to award exemplary damages. However, the assessment of punitive damages in the Tennessee cases was not levied upon a defendant, but upon a complainant who maliciously sought and received injunctive relief from the court.[21]

The majority of jurisdictions have not met the question of whether equity can award punitive damages. Some jurisdictions, such as Indiana, Missouri, and Montana, remain doubtful due to the ambiguous language found in the decisions, while other jurisdictions such as Mississippi and Oklahoma, are unsettled because of conflicting decisions on the question.[22]

Nearly twenty jurisdictions that have considered the question support the view that exemplary damages may not be awarded by a court of equity, while at present only four jurisdictions have clearly stated that such damages are within the discretionary power of equity. The jurisdictions that comprise the majority have supported their decisions on theories that range from a declaration that equity is absent the power to award such damages, to statements that when a litigant asks for equitable relief, he waives all claim to punitive damages.[23]

As evidenced from the opinion in the instant case and the line of California appellate decisions, the successful attack on the majority position has been made by the argument that the code pleading has removed the historic procedural separation between law and equity. Such an argument appears logically sound. The holding of the New York Court of Appeals in the instant case would seem to be a tardy but welcome victory for the code. Over ninety years have passed since the New York legislature attempted to abolish separate forms of action, and at this point in time it is difficult to argue that courts in code states cannot sit in equity and at law at the same time. Yet the position of the majority seems to be premised on that very argument.

The maxim that equity will give only what is justly due and will not enforce a penalty cannot control in a state where by statute there is but one form of action. If the award of punitive damages is to be recognized as an incidental tool by which a just and final disposition of litigation can be

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[20] *Supra* note 5.

[21] Cases cited, *supra* note 3.

[22] Annot., 48 A.L.R.2d 947 (1956).

[23] South Carolina is apparently the sole authority for the proposition that when a litigant seeks an equitable remedy, he waives his right to punitive damages. See note 24 *infra*.

effected, there is no valid reason why it should be permissible at law but not in equity. Courts in New York and the other code states were intended to have the power to mold decrees which will effectuate and accomplish the desired ends. Perhaps the reluctance of the majority of jurisdictions to accept the power of equity to award exemplary damages stems from a belief that the award of punitive damages has no place in a civil action. If so, the argument should be addressed to the doctrine of punitive damages rather than the power of equity to award such damages.

If, in essence, the position of the majority is that equity cannot award puntive damages because it has not done so in the past, such an argument evidences apparent weakness when extended to its logical conclusion. The statement that equity has not assessed punitive damages in the past is itself not wholly true, as penalties have in the past been assessed by equity for violations of injunctions.

The South Carolina position [24] that a litigant seeking equitable relief waives his right to punitive damages is as unassailable as it is indefensible. Such a position assumes that the remedies are exclusive and that assumption is the very question to be resolved.

New York, by its decision in the instant case, has greatly strengthened the position previously held by California and Tennessee. It is very possible that in the future other states in addition to Texas will adopt the view that a court of equity can in its discretion award exemplary or punitive damages.

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[24] See Standard Warehouse Co. v. Atl. Coast Line R.R., 222 S.C. 93, 71 S.E.2d 893 (1952).